

MINUTES OF THE MEETING
OF THE CITY COUNCIL OF THE
CITY OF BURLINGTON
March 6, 2007
7:30 P.M.

The City Council of the City of Burlington held a regularly scheduled meeting in the Council Chamber, Municipal Building, 425 South Lexington Avenue, Burlington, N. C., 27216-1358, on March 6, 2007, at 7:30 p.m.

Mayor Stephen M. Ross presided

Councilmembers present: Mayor Ross, Councilmembers Jones, Huffman, Starling and Wall

Councilmembers absent: None

Harold Owen, City Manager, present

Robert M. Ward, City Attorney, present

Jondeen D. Terry, City Clerk, present

CALL TO ORDER: Mayor Steve Ross

INVOCATION: Councilmember Don Starling

MINUTES

Mayor Ross called for approval of the City Council Special Meeting minutes of February 20, 2007, at 8:15 a.m and the City Council meeting of February 20, 2007, at 9:00 a.m.

Upon motion by Councilmember Wall, seconded by Councilmember Starling, it was resolved unanimously to approve the minutes of the meetings held on February 20, 2007.

ADD-ON'S: CONSENT AGENDA:

- Adopt revised City Council and work session meeting schedule - July - December 2007
- Approve - City of Burlington 2007-08 Advocacy Agenda

ADOPTION OF AGENDA

Upon motion by Councilmember Jones, seconded by Councilmember Starling, it was resolved unanimously to adopt the above referenced add-ons.

Upon motion by Councilmember Jones, seconded by Councilmember Wall, it was resolved unanimously to adopt the agenda.

CONSENT AGENDA:

1. (A) To authorize the Mayor to sign Substitution of Trustee documents for the City's Deeds of Trust on the following properties:

- Cephus Waddell Bigelow and Elizabeth Coble Bigelow - 926 Apple Street
- Deborah A. Morrow - 607 Ross Street
- Ruffin Morrow and Elaine Octavia Morrow - 706 Ross Street

The City desires to substitute Mr. Marc O'Neal as its Trustee in place of R. Nelson Richardson on the Deeds of Trust for the loans in order to execute modification agreements to the existing Deeds of Trust.

- (B) To authorize the Mayor to sign a Substitution of Trustee document for the City's Deed of Trust on Sharon Leath's property located at 1447 Peace Lane. The City desires to substitute Mr. Marc O'Neal as its Trustee in place of Spencer B. Ennis on the Deed of Trust for the loan in order to execute a modification agreement to the existing Deed of Trust.
- (C) To approve a final plat of MacArthur Landing Townhomes, Phase Four, located on the west side of MacArthur Lane approximately 750 feet southwest of Durham Street Extension as shown on plans by Alley, Williams, Carmen and King, Inc., dated January 19, 2007, and containing eight lots.
- (D) To approve a final plat of the John R. Shepherd Subdivision located on the west side of Alamance Road approximately 200 feet north of North Aviation Drive as shown on plans by Boswell Surveyors, Inc., dated January 4, 2007, and containing two lots.

- (E) To re-approve a final plat of Eric Lane Business Park Subdivision, Phase 1, that was originally approved by City Council on September 5, 2006, and re-approved on December 5, 2006. The plat was not recorded within the 60-day time limit provided for within the Subdivision Regulations.
- (F) To approve the following schedule changes:
- Cancel July 3, 2007, City Council meeting.
 - Reschedule July 2, 2007, work session to July 16, 2007, at 7:00 p.m.
 - Change July 17, 2007, City Council meeting time to 7:30 p.m.
 - Reschedule the September 3, 2006, work session to September 17, 2007, at 7:00 p.m.
 - Change the October 16, 2007, City Council meeting time to 7:30 p.m.
- (G) To approve the City of Burlington 2007-08 Advocacy Agenda.

City of Burlington
2007-2008 Advocacy Agenda

Infrastructure Financing

The League will seek legislation to provide additional funds for municipal infrastructure, including both short-term funding in the form of bonds and a long-term permanent source of revenue.

- The League will seek adequate permanent and dedicated sources of revenue for infrastructure needs.
- The League will seek legislation to create additional local option revenue sources for municipalities that may be dedicated to infrastructure needs including those required for transportation, water, and sewer services.
- The League will seek legislation authorizing a state bond package that includes significant funding for clean water projects and urban transportation needs.

Transportation

Transportation funding shortfalls and the increasing cost associated with building and maintaining new roads need to be addressed at the state and local level.

- The League will seek a legislative study of transportation issues to include an evaluation of the DOT equity formula, a comparison of the total motor fuel tax collected in each county to Highway Trust Fund expenditures, and realignment of DOT operational divisions to match regional planning needs and transportation functionality.
- The League will seek legislation to prohibit transfer of Highway Trust Fund monies to the General Fund so that these funds can be directed to vital transportation needs.

Support the U.S. Conference of Mayors' Legislative Agenda for additional federal funding for local transportation efforts.

Public Duty Doctrine

In April 2000, two appellate court decisions removed the well-established public duty doctrine as a defense for local governments in negligence actions arising from situations where local governments have sought to provide various services in furtherance of the public health, safety, and welfare. In order to restore the defense, the Board recommends the following:

- The League will seek legislation to codify the public duty doctrine as a defense in tort actions brought against municipalities.

Planning and Land Use

Although municipalities have statutory options for addressing substandard dwellings, they need additional authority to remedy non-residential buildings.

- The League will seek legislation to provide municipalities with additional authority to regulate non-residential dilapidated structures.

Alcohol Beverage Control (ABC) Permitting

Significant secondary effects can arise from the inappropriate location of alcohol establishments, yet under the current statutory framework and case law, there are substantial limitations on municipal authority to regulate such locations.

- The League will seek legislation to enhance municipalities' ability to regulate inappropriate location of licensed alcohol establishments.

Environment

There are ongoing conflicts between municipalities and state agencies about the state's responsibility to pay municipal stormwater utility fees for state property.

- The League will seek legislation to clarify governmental agency responsibility with regard to local government stormwater utility fees.

The state should seek a bond referendum to create a substantial source of funding to address the depletion of natural resources due to growth and development.

- The League will seek legislation authorizing a statewide bond referendum for the acquisition of land for the preservation of natural resources.

Public Safety

Gang violence and associated activity have increased exponentially in many areas throughout the state, and local governments need additional means to combat the negative impacts of this activity.

- The League will seek legislation to provide new tools and funding for gang prevention. (House Bill 50, Street Gang Prevention Act)

Housing

Municipalities seek to provide a wide range of housing options for its citizens to provide a high quality of life. The League supports state efforts to increase the supply of affordable housing to complement the existing efforts of local governments.

- The League will seek additional dedicated funding for affordable housing.

Parks and Recreation

- Support "Land for Tomorrow" bond initiative on state level and funding for land, water and conservation funding on a national level.

Economic Development

- On state level, lobby to expand areas eligible for Urban Enterprise and State Development Zones.
- On a national level, lobby for continued support of the Community Development Block Grant Program as supported by the U.S. Conference of Mayors' Legislative agenda

Upon motion by Councilmember Huffman, seconded by Councilmember Jones, it was resolved unanimously to approve the foregoing consent agenda.

NEW BUSINESS:

ITEM #2: AWARD OF BIDS - STREET RESURFACING AND SIDEWALK REPLACEMENT

Mayor Ross announced that the City Council would consider awarding a bid in the amount of \$4,522,424.20 to S. T. Wooten Corporation for street resurfacing, and to ECON International Corporation in the amount of \$729,450.00 for sidewalk replacement. Bids were received by the Engineering Department on Thursday, February 22, 2007, at 10:00 a.m. and 10:30 a.m. respectively.

Public Works Director Gary Hicks stated that 30 miles of street resurfacing had been completed at a cost of 2.8 million dollars. Mr. Hicks stated that in 2003 the City had a pavement evaluation study completed by USI and the study was the basis of the 2005 November bond approval for 9.3 million dollars for street and sidewalk improvements. Mr. Hicks stated that upon completion of the 30 miles of resurfacing it would be important to revisit the pavement evaluation study for several reasons. He stated that it had been three years since the study had been conducted and he wanted to make sure the City was doing what was correct to insure the most efficient use of the dollars. Mr. Hicks stated that in one year the 30 miles had brought the City up to a condition rating of 78.5.

Councilmember Huffman stated that the present City Council and future Councils would need to budget to resurface streets so that the City would not fall behind again.

Assistant Public Works Director Bob Patterson pointed out that the price of asphalt had increased 22% from last year.

He stated that the schedule to begin resurfacing would start April 2, 2007, and should be completed by October 31, 2007. Mr. Patterson stated prep work would be done prior to putting asphalt down and that there were several streets where water line replacements would be constructed prior to resurfacing.

Mr. Hicks stated that there had been conversations with NCDOT about trading streets. Mr. Hicks stated that there is more involved when taking over streets than just road maintenance - snow removal, mowing, street sweeping - and that the North Carolina Department of Transportation (NCDOT) does not provide those services.

Upon motion by Councilmember Huffman, seconded by Councilmember Starling, it was resolved unanimously to award bids to S.T. Wooten Corporation for street resurfacing and ECON International Corporation for sidewalk replacement.

ITEM 3: CONTRACT - ENGINEERING SERVICES - STONEY CREEK AND LAKE CAMMACK DAMS

Mayor Ross announced that the City Council would consider approval a contract at a cost of \$42,000 for engineering services from Schnabel Engineering South, PC. The contract includes an assessment of the Stoney Creek Dam and a work plan to address known and suspected defects in the structure and for a continuation of the work that has been performed on Lake Cammack Dam regarding crack repairs on the upstream face of the dam.

Utilities Director Steve Shoaf stated that this request was for engineering services and that the City had been using Schnabel Engineering for the past five years. He stated that Schnabel Engineering had done repair work on the Mackintosh Dam and other structural repairs and that the firm had also worked on the Lake Cammack dam last year by using divers to successfully seal cracks on the face of the dam. He stated that there was a particular problem with the Lake Cammack dam due to the period of time that it was constructed and that the dam is expanding, cracking and crumbling. He stated on the Stoney Creek dam that a crack had been repaired 12 years ago by a company that repaired the dam from the back side and that water continued to enter the dam but kept the water from coming out of the back of the dam. He stated that Schnabel wanted to use divers on the front face of the dam, find the crack and seal it from the waterside.

Councilmember Huffman asked the age of the dams.

Mr. Shoaf stated that the Mackintosh Dam was built in 1992, Lake Cammack dam in 1960 and Stoney Creek in 1927. He stated that the Stoney Creek dam is the location of the water intake that is being used for the Ed Thomas Water Plant and is a critical structure for the City.

Mr. Shoaf explained the process of sealing the cracks in the dams.

Councilmember Jones stated that Mr. Shoaf was the man who was responsible for the City's drinking water and stated he did an excellent job and that Mr. Shoaf was a very important person to the City.

Mayor Ross stated that there were a number of other municipalities that rely on Mr. Shoaf's expertise and call him for information and help.

Upon motion by Councilmember Jones, seconded by Councilmember Huffman, it was resolved unanimously to approve the contract for engineering services for Schnabel Engineering South, PC.

ITEM 4: MAYNARD AQUATIC CENTER POOL COVER PROJECT

Mayor Ross announced that the City Council would consider the following items concerning the Maynard Aquatic Center Pool Cover Project:

- 1) Approval of the Project Ordinance
BA2007-27

Increase Revenues:

010-39398-0001 Appropriated Restr. Fund Bal. \$665,000

Increase Expenditures:

010-50502-9100 Operating Transfers Out \$665,000

- 2) Approval of the contract to Moser, Mayer, Phoenix Associates, PA

Recreation and Parks Director Tony Laws stated that research had been completed for an air inflated cover known as a "bubble." He introduced Mr. Bob Chandler, chairman of the Parks and Recreation Commission. Mr. Laws stated that two recommendations had been made by the Commission: - (1) replace the present cover; and, (2) replace the air-inflated structure

with a metal frame structure with vinyl panels. Mr. Laws stated that the vinyl panels would last longer and that the aluminum frame had an indefinite life. He stated that the panels could be replaced as needed and the utility cost would be considerably reduced by not heating outside air. Mr. Laws asked the Council for approval to go forward with the replacement using the metal frame structure.

Councilmember Jones asked if the Parks and Recreation Commission voted on this request, and Mr. Laws replied that the Commission voted unanimously to approve the recommendation.

Upon motion by Councilmember Jones, seconded by Councilmember Starling, it was resolved unanimously to approve the budget amendment, project ordinance and the contract.

Upon motion by Councilmember Jones, seconded by Councilmember Starling, it was resolved unanimously to approve the budget amendment, project ordinance and the contract with Moser, Mayer, Phoenix Associates, PA.

07-03

BA2007-27

Increase Revenues:

010-39398-0001 Appropriated Restr. Fund Balance	\$665,000
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Increase Expenditures:

010-50502-9100 Operating Transfers Out	\$665,000
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MAYNARD AQUATIC CENTER - POOL COVER PROJECT ORDINANCE
BA2007-27

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BURLINGTON, NORTH CAROLINA, that pursuant to Section 13.2 Chapter 159 of the General Statutes of North Carolina, the following Project Ordinance is hereby adopted.

Sec. 1. The project authorized is the construction/replacement of the pool cover at the Maynard Aquatic Center in the City of Burlington, North Carolina.

Sec. 2. The officials of the City of Burlington are hereby directed to proceed with this project within the budget outlined in this project ordinance.

Sec. 3. The following revenues are anticipated to be Available to the City to complete the project:

436-38000-0010 Operating Transfers In \$665,000

Sec. 4. The following amounts are appropriated for the project:

436-50000-1900 Professional Services	\$ 20,000
436-60000-7500 Construction	445,000
436-60000-7500 Electric	75,000
436-60000-7500 HVAC - Mechanical	100,000
436-60000-8000 Contingency	25,000
	<u>\$665,000</u>

Sec. 5. The Finance Director shall report on the financial status of this project as directed by the City Council and shall inform the Council of any unusual occurrences.

Sec. 6. Copies of this Project Ordinance shall be made available to the Budget Officer and the Finance Director for direction in carrying out this project.

Sec. 7. That this ordinance shall take effect upon passage

ITEM 5: RESOLUTION - CAPITAL LEASE FINANCING - AWARD OF BID

Mayor Ross announced that the City Council would consider awarding a bid in the amount of \$542,180.00 to RBC Centura for the capital lease financing for the balance of the 2006-07 equipment and to adopt a resolution authorizing the Mayor to execute the Installment Financing Contract and the Escrow Deposit Agreement subject to approval by the City Attorney.

Finance and Risk Management Director Linda Hollifield stated when the City did the Bond sale a year ago, a 9.3 million dollar loan was issued to keep the interest rates low and to get a bank qualified loan. She explained that the City could not borrow more than \$10 million in one calendar year and had budgeted \$800,000 for equipment to be purchased under the capital lease purchase method. Ms. Hollifield stated that last year the City issued \$400,000 and that this was the balance of the equipment that would be purchased for this budget year. She stated that the bid came in at 3.71% for the borrowing

which was .2% higher than last year and was a very favorable rate. She stated the actual agreements are on file in the City Clerk's office and in her office and asked the Council to consider authorizing the Mayor to execute the two agreements subject to the approval of the City Attorney.

07-01

The governing body for the City of Burlington, North Carolina, held a regular meeting at the 425 South Lexington Avenue, Burlington, North Carolina, the regular place of meeting, on March 6, 2007, at 7:30 p.m.

Present: Mayor Stephen Ross, Councilmembers Jones, Huffman, Starling and Wall

Absent: None

Also Present: City Manager Harold Owen, City Attorney Robert Ward, Director of Finance and Risk Management Linda Hollifield and City Clerk Jondeen Terry

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Mayor Stephen Ross introduced the following resolution which was read:

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT FINANCING CONTRACT IN THE AMOUNT OF \$542,180.00 WITH RBC CENTURA BANK TO FINANCE THE ACQUISITION OF CERTAIN EQUIPMENT FOR USE BY THE CITY OF BURLINGTON, NORTH CAROLINA, AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED INSTRUMENTS, AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH

BE IT RESOLVED by the governing body for the City of Burlington, North Carolina (the "Unit"):

The governing body of the Unit does hereby find and determine: The City of Burlington proposes the acquisition of certain equipment, which may include fixtures as more fully described in the hereinafter mentioned Contract (collectively, the "Equipment");

After consideration, the governing body of the Unit has determined that the most advantageous manner of financing thereof is by an installment contract pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended; Pursuant to Section 160A-20, the Unit is authorized to finance the acquisition of personal property, including fixtures, by installment contracts that create a security interest in the property financed to secure repayment of the financing; and RBC Centura Bank ("RBC Centura") has proposed that RBC Centura enter into an Installment Financing Contract with the Unit to finance the Equipment pursuant to which RBC Centura will lend the Unit the amount of \$542,180.00 (the "Contract") and enter into a related Escrow Agreement between the Unit and RBC Centura (the "Escrow Agreement").

The governing body of the Unit hereby authorizes and directs the Authorized Officer, Mayor Stephen Ross, to execute, acknowledge and deliver the Contract and Escrow Agreement on behalf of the Unit in such form and substance as the person executing and delivering such instruments on behalf of the Unit shall find acceptable. The Clerk is hereby authorized to affix the official seal of the City of Burlington to the Contract and the Escrow Agreement and attest the same.

The proper officers of the Unit are authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do or cause to be done any and all other acts and things necessary or proper for carrying out this Resolution and the Contract and the Escrow Agreement.

Notwithstanding any provision of the Contract or the Escrow Agreement, no deficiency judgment may be rendered against the Unit in any action for breach of a contractual obligation under the Contract or the Escrow Agreement and the taxing power of the Unit is not and may not be pledged directly or indirectly to secure any moneys due under the Contract, the security provided under the Contract being the sole security for RBC Centura in such instance.

The Unit covenants that, to the extent permitted by the Constitution and laws of the State of North Carolina, it will comply with the requirements of the Internal Revenue Code of 1986, as amended (the "Code") as required so that interest on the Unit's obligations under the Contract will not be included in the gross income of RBC Centura.

The Unit hereby represents that it reasonably expects that it,

all subordinate entities thereof and all entities issuing obligations on behalf of the Unit will issue in the aggregate less than \$10,000,000 of tax-exempt obligations, including the Contract (not counting private-activity bonds except for qualified 501(c)(3) bonds as defined in the Code) during calendar year 2006. In addition, the Unit hereby designates the Contract and its obligations under the Contract as a "qualified tax-exempt obligation" for the purposes of the Code.

This Resolution shall take effect immediately upon its passage.

Upon motion of Councilmember Jones, seconded by Councilmember Starling, members of the governing body, the foregoing resolution entitled "RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT FINANCING CONTRACT IN THE AMOUNT OF \$542,180.00 WITH RBC CENTURA BANK TO FINANCE THE ACQUISITION OF CERTAIN EQUIPMENT, AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED INSTRUMENTS, AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH" was passed by the following vote:

Ayes: Mayor Stephen Ross, Councilmembers Mark Jones, David Huffman, Don Starling and Ronnie Wall

Nays: None

PASSED AND ADOPTED this 6th day of March 2007.

Upon motion by Councilmember Huffman, seconded by Councilmember Wall, it was resolved unanimously read the resolution into the minutes.

PUBLIC COMMENT PERIOD:

Mr. Richard Parker, 552 Glenwood Avenue, Burlington, expressed concern about a safety issue involving homeless panhandlers. Mr. Parker asked if the City had a policy and what the Police Department's stand was on the panhandlers.

Mayor Ross stated that he would refer the question to the Police Department representative since it had dealt with the panhandlers. Mr. Ross stated that the Council had been to Raleigh and that special legislation had been passed to give City's authorization to regulate state thoroughfares.

City Attorney Robert Ward stated that the City did get special legislation to allow the City to regulate solicitation on state streets. Mr. Ward stated concerns with the City's authority to regulate street solicitation. He stated that the City had authority to regulate state streets but did not have problems on City streets. Mr. Ward stated that it would require additional ordinances if the Council wanted to address it in that manner. He stated that the City had a permit system that those who solicit are required to get a permit from the Police Department, and for a while it was controlled, but according to Mr. Parker, it had become more active possibly due to the weather.

Mayor Ross asked if the people who are supposedly homeless were getting a permit before they go out and solicit.

Lt. Chris Verdeck, Burlington Police Department, stated that was correct and that officers check the solicitors daily and that they had been in contact with Mr. Ward on how to remedy the soliciting problems.

Mr. Ward stated that he would meet with the Chief of Police and return to Council at a work session and discuss what could be done.

REQUEST FOR CLOSED SESSION:

Upon motion by Starling, seconded by Councilmember Jones, it was resolved unanimously to go into closed session pursuant to G.S. 143-318.11(a)(6) to continue the performance evaluation of the City Manager and City Attorney.

CLOSED SESSION WAS HELD

Upon motion by Councilmember Huffman, seconded by Councilmember Jones, it was resolved unanimously to return to open session.

ADJOURN:

Upon motion by Councilmember Huffman, seconded by Councilmember Starling, it was resolved unanimously to adjourn.

Jondeen D. Terry
City Clerk

